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Attorneys for Plaintiff WAYNE RUDEN

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

IN RE: BARD IVC FILTERS
PRODUCT LIABILITY LITIGATION,

THIS DOCUMENT RELATES TO:

MDL Docket No. 15-02641

WAYNE RUDEN,
C. A. No.: CV-16-00344-PHX-DGC

WAYNE RUDEN,
Plaintiff,

vs.

C.R. BARD, INC., et al.,
Defendants.

**PLAINTIFF WAYNE RUDEN'S
NOTICE OF MOTION AND MOTION
FOR SHORT CONTINUANCE OF
HEARING DATE; MEMORANDUM
OF POINTS AND AUTHORITIES**

Complaint Filed: October 7, 2015

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiff Wayne Ruden will and hereby does move the Court to allow a short continuance of the March 31, 2016 hearing date for Mr. Ruden's motion to remand this case to the State of California, San Francisco County Superior Court, and California Pacific Medical Center's motion to dismiss due to counsel's unavailability. Mr. Ruden's attorneys are currently in a five week trial which began on February 29, 2016 and which will not conclude by March 31, 2016.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declaration of Glen Turner, the pleadings and papers on file herein, and upon other matters as may be presented to the Court at the time of the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

1) Whether this Court should allow a short continuance of the March 31, 2016 hearing date to allow Mr. Ruden's counsel to appear for oral argument.

II. SUCCINCT STATEMENT OF RELEVANT FACTS

Mr. Ruden brings this case for serious injuries suffered as a result of CPMC's recommendation for the surgical implantation of a medical device designed and manufactured by Bard, the Bard Recovery Filter ("BRF") into his inferior vena cava. On October 7, 2015 Mr. Ruden filed suit against CPMC, a general medical and surgical hospital with multiple locations and a principal place of business in San Francisco, California. Mr. Ruden also filed suit against Bard. Bard, without the consent of CPMC, has improperly attempted to have this case removed from state to federal court. As a result of this improper removal, Mr. Ruden filed a motion to remand, currently pending. CPMC has filed a motion to dismiss, which is also pending. On March 24, 2016 this Court advised that the hearing on these motions will occur on March 31, 2016. (Declaration of Glen Turner ["Turner Decl."] ¶2).

Counsel for Mr. Ruden, including both David Ongaro and Glen Turner, are currently engaged in a lengthy trial in the Monterey County Superior Court of California, Case No. M124780, *Leonor Vega, Individually and as Successor-In-Interest to Jesus Corona Vega, Deceased vs. Borg warner Morse Tec. Inc., Individually and as Successor-In-Interest to Borg-Warner Corporation, et al.* (Turner Decl. ¶3). The Vega trial will not be concluded by March 31, 2016, the date currently scheduled for the hearings. (*Id.* ¶4). In order to allow an attorney who is familiar with Mr. Ruden's case, including the factual and legal background of the pending motions, appear for oral argument on these critical motions, counsel hereby requests a short continuance of the hearing date, through April 14, 2016. (*Id.*).

III. LEGAL STANDARD

It is well established that this Court has broad discretion to control its own docket. (*See, e.g., M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1091 (9th Cir. 2012). As a result, this Court has authority to allow a short continuance of the March 31, 2016 motion hearings.

IV. ARGUMENT

Because Mr. Ruden's counsel is currently in the middle of a lengthy trial and cannot appear for argument, either in person or telephonically, on March 31, 2016, a short continuance is warranted. Such action will not prejudice the parties herein, whereas Mr. Ruden's interests will be severely prejudiced should counsel not currently familiar with all aspects of the critical, pending motions be required to become familiar with the legal and factual issues involved in the few days remaining before the hearings take place. (Turner Decl. ¶5).

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V. CONCLUSION AND RELIEF REQUESTED

Mr. Ruden respectfully requests that the Court grant his motion and allow a short continuance of the hearings on Mr. Ruden's motion to remand and CPMC's motion to dismiss.

Dated: March 24, 2016

ONGARO PC

By: /s/ Glen Turner
Glen Turner
Attorneys for Plaintiff
WAYNE RUDEN

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2016, a copy of the foregoing was served electronically and notice of the service of this document will be sent to all parties by operation of the Court's electronic filing system to CM/ECF participants registered to receive service in this matter. Parties may access this filing through the Court's system.

/s/Glen Turner
Glen Turner